



TOWN OF FAIRHAVEN, MASSACHUSETTS

CONSERVATION COMMISSION

Town Hall · 40 Center Street · Fairhaven, MA 02719

Staff Report

Date: May 20, 2019

To: Conservation Commission

From: Whitney McClees, Agent

CON-19-051: Hiller Avenue & Timothy Street, Assessors Map 28C, Lots 71 and 71A

Notice of Intent filed by Robert Roderiques for the construction of paved roadways and stormwater management systems and the installation of utilities including the placement of fill for the aforementioned work for a proposed 16-lot subdivision at the property located at Assessors Map 28C, Lots 71 and 71A. Work to take place within the Buffer Zone to Bordering Vegetated Wetland.

MassDEP NOI File #: SE 023-1297

Documents Reviewed: Notice of Intent Submission and associated plans and materials, 310 CMR 10.00

Included in the Notice of Intent is a letter dated June 13, 2016 from Ecosystems Solutions, Inc. regarding the wetland delineation done as part of a prior filing (SE023-1230). The letter notes that the wetland boundary off-site is likely within 100 feet of the eastern property line, which could have impact on the extent of Buffer Zone on-site. The owner of the adjacent property is the Town, so the letter notes that if the Commission absolutely needs confirmation of the wetland boundary on its land (*i.e. continuation of flags after #39*) as it relates to the subject property, access could be granted in the future at the Town's discretion.

Questions for Applicant: Is there a plan for assessment of where the wetland line may go beyond flag 39?

Notes: With a project of this size, a minimum of 25 feet from the edge of the wetland for any impervious surfaces would assist in mitigating any adverse impacts to the resource area, especially with the increase in the amount of impervious surface.

Would the Commission prefer to do the Stormwater Peer Review or wait for Planning Board to do the peer review?

CON-19-029 200 Mill Road

Notice of Intent filed by Paul Downey, Mill Bridge Holdings LLC, for the construction of a 72-space parking expansion within the 100-foot buffer zone to a Bordering Vegetated Wetland at the property located at 200 Mill Road, Assessors Map 36, Lot 11A.

MassDEP NOI File #: SE 023-1286

Notes: Began process of engaging a stormwater peer reviewer.

CON-19-037 497 Sconticut Neck Road

Notice of Intent filed by Martha Tichon for the removal of a horse paddock encroaching on Bordering Vegetated Wetland and the creation of a new paddock in an upland area at the property located at 497 Sconticut Neck Road, Assessors Map 29, Lot 28B. Work to take place within the Buffer Zone to Bordering Vegetated Wetland.

MassDEP NOI File #: SE 023-1291

Documents Reviewed: Notice of Intent and associated attachments, most recent site plan revision dated 4/29/2019, Peer Review Report from LEC Environmental, 310 CMR 10.00

Request from Applicant: Continue to June 3 pending addition of replication to plans.

The Peer Review Report noted that the revised plans dated April 29, 2019 addressed each of the recommendations made by the peer reviewer to the applicant with the exception of a wetland replication area. The Peer Review report recommends that the Commission require replication for the filled BVW since it is a requirement of the state Regulations for filling BVW.

DEP noted that any Order of Conditions should include monitoring conditions to document that the altered areas are at least 75% established with indigenous wetland species within two growing seasons, that any invasive plants in the impacted area are identified and removed, and that the Commission reserves the right to require additional measures to achieve compliance should the altered area fail to become established (i.e. a planting plan).

Based on my assessment of the revised plans dated April 29, 2019, it appears approximately 350 feet of replication would constitute 1:1. The Commission could always require a greater area of replication. Between flags 32A and 35 seems to be a good location for replication as it allows the replication to happen regardless of the process of moving the paddock and provides an area large enough to accommodate replication.

If the Commission decides to issue an Order of Conditions, my recommended conditions are as follows:

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.

3. REC-1
 4. REC-2
 5. ADD-1
 6. ADD-4b
 7. STO-4
 8. STO-5
 9. WET-2
- B. Prior to Construction
1. REC-3
 2. Notify the Conservation Agent 72 hours prior to beginning work
 3. EMC-1
 4. DER-1
- C. During Construction
1. STO-1
 2. MAC-3
 3. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
 4. DEB-1
 5. Move the debris piles as noted on the plans dated _____ greater than 25 feet from the edge of the wetland and install an erosion barrier to prevent impact to the resource area.
 6. BLD-2
 7. BLD-3
 8. BLD-4
- D. After Construction/In Perpetuity
1. COC-1
 2. Post-construction photographs demonstrating compliance with this Order, including established vegetation where required.

Perpetual Conditions

The below conditions do not expire upon completion of the project.

3. CHM-2 This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
 4. DER-4
 5. There shall be no additional alterations of areas under Conservation Commission jurisdiction without the required review and permit(s). This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
 6. Maintenance of the culvert shall be the responsibility of the property owner to ensure the hydrologic connection between the wetland areas is maintained and that water is able to flow seasonally or otherwise appropriately. This condition shall survive the expiration of this Order, and shall be included as a continuing condition in perpetuity on the Certificate of Compliance.
- E. Wetland Replication/Restoration

1. REP-1
2. REP-2
3. REP-3
4. REP-8
5. REP-12
6. The above conditions shall apply not only to the wetland replication but also to the restoration of the impacted wetland resource area.
7. Should the impacted wetland area not successfully re-establish within two growing seasons of cessation of impact, the Commission reserves the right to require additional measures necessary to achieve successful restoration.

CON-19-050 46 Sconticut Neck Road

Notice of Intent filed by Joshua Alves, Alexander Grey Development LLC, for the construction of an 8-house subdivision, roadway, stormwater facility, and utilities and for wetland mitigation of historical impacts at the property located at 46 Sconticut Neck Road, Assessors Map 28, Lot 24. Work to take place within Bordering Vegetated Wetland and Buffer Zone to Bordering Vegetated Wetland.

MassDEP NOI File #: SE 023-1296

Documents Reviewed: Notice of Intent and associated documents submitted, 310 CMR 10.00

Questions for Applicant: How did you determine the location of the wetland mitigation? Would it be feasible to move the impervious surfaces (i.e. roadway and driveways) further from the edge of the wetland? What is your proposal for the remaining acreage of resource area currently attached to Lot 6?

Notes: Began process of engaging a stormwater peer reviewer. The proximity of lots 6 and 7 to the resource area is something that gives me pause with regard to preventing impact via this project and preventing impacts in the future through yard encroachment, etc.

CON-19-052: 7 Union Street

Notice of Intent filed by Fairhaven Shipyard Companies, Inc. for the construction of a pile-supported platform, gangway, and pile-anchored float to provide access to navigable waters at the property located at 7 Union Street, Assessors Map 7, Lot 11. Work to take place in Land Under the Ocean, Designated Port Area, and Land Containing Shellfish.

MassDEP NOI File #: SE 023-1298

Documents Reviewed: Notice of Intent Submission and associated documents, 310 CMR 10.00

Resource Areas: Designated Port Area, Land Under Ocean, Land Containing Shellfish

MA DMF reviewed the NOI and, based on the scope of work as currently proposed, had no recommendations for sequencing, timing, or methods that would avoid or minimize impact.

Recommendation: Continue to allow time to determine more clearly title and licensing for basin.

CON-19-053: 3 Goulart Memorial Drive

Request for Determination of Applicability filed by Colin Veitch for removal of trees at the property located at 3 Goulart Memorial Drive, Assessors Map 42, Lot 15K. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE.

Documents Reviewed: RDA Submission and associated documents

Questions for Applicant: How many of the trees being proposed for removal are dead or dying? To avoid falling limbs, etc., is there a possibility to remove some of the branches instead of the whole tree? Do you have thoughts about what plants will be planted after the trees are removed?

Recommendation: Negative 2 Determination, Negative 3 Determination if Commission feels the applicant should submit a planting plan

CON-19-055: 25 Abbey Street

Notice of Intent filed by Agostinho Pinto for the razing of the existing dwelling and garage and construction of a new flood zone-compliant single-family dwelling at the property located at 25 Abbey Street, Assessors Map 6, Lot 102. Work to take place in Land Subject to Coastal Storm Flowage/Zone VE and Buffer Zone to Bordering Vegetated Wetland

MassDEP NOI File #: SE 023-1300

Documents Reviewed: NOI Submission and associated documents, 310 CMR 10.00

Questions for Applicant: With regard to Land Subject to Coastal Storm Flowage, what is the house proposed to be supported by? Would that not impact/alter LSCSF? What about the running sewer and water service? What is the plan for the existing driveway? What is the plan for the areas where the structures are being razed? Will they be revegetated?

If the Commission decides to issue an Order of Conditions, my recommended conditions are as follows:

A. General Conditions

1. ACC-1
2. With respect to all conditions except_____, the Conservation Commission designates the Conservation Agent as its agent with full powers to act on its behalf in administering and enforcing this Order.
3. REC-1
4. REC-2
5. ADD-1
6. ADD-4b
7. STO-4

B. Prior to Construction

1. CAP-1
2. CAP-3
3. DER-1
4. REC-3
5. Notify the Conservation Agent 72 hours prior to beginning work
6. PCC-1
7. EMC-1
8. SIL-5
9. LOW-2

C. During Construction

1. STO-1
2. SIL-3
3. MAC-3
4. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders, or any other components shall be fixed immediately.
5. DEB-1
6. BLD-1
7. BLD-3
8. BLD-4
9. REV-1
10. REV-3
11. WAS-1

D. After Construction/In Perpetuity

1. COC-1

Perpetual Conditions

The below conditions do not expire upon completion of the project.

2. CHM-3
3. DER-4

CON-19-056: Fort Phoenix Playground

Request for Determination of Applicability filed by Massachusetts Department of Conservation and Recreation to install a border along two sides of the playground to help retain sand at the property located on Green Street, Assessors Map 1, Lot 2. Work to take place in Buffer Zone to Coastal Beach and Dune and in Land Subject to Coastal Storm Flowage/Zone VE.

Recommendation: Negative 3 Determination, The sand used for this project shall be clean sand and the source of the sand used for this project shall be submitted to the Conservation Commission or its Agent for approval prior to its use.

Requests for Extensions Recommendations

Cedar Street (SE023-1198): Approve request for 3-year extension to August 24, 2020

3 Sedgewick Road (SE023-1233): Approve request for 2-year extension to June 27, 2021.

Violations/Enforcement Orders/Cease and Desist Notices:

Assessors Map 15, Lot 43 (owner resides at 3 North Street) – clearing of vegetation in the buffer zone

Recommendation: Debris piles need to be removed and area should to be allowed to revegetate naturally.

55 Bayview Avenue

Comments/Recommendation: The area noted in Enforcement Order that needs to be restored to beach (right side of house) is not currently paved, though it is not natural substrate currently. I would recommend it be restored to beach as indicated in Enforcement Order due to amount of impervious surface already existing on site. I would also recommend that the area noted in the Enforcement Order to be restored to lawn be restored to something pervious due to proximity to the beach.

1 Alcobia Drive

Recommendation: I have recommended to the property owner that he file an RDA for the work he would like to do with respect to tree cutting, installing a fence, and installing a gate. I would recommend the Cease and Desist remain posted until the permit is issued.

33 Bayview Avenue

Recommendation: I have recommended to the property owners that they file an NOI for the work they would like to do. I also recommended they have the edge of the resource area delineated so they know for certain what is buffer zone and what is resource area. Based on MassGIS, the area behind the shed where the vegetation was cut and where the gravel was placed is likely resource area. Any filing should include revegetation with native species that can assist in coastal bank stabilization. I would recommend the Cease and Desist remain posted until a permit is issued.

Thuja occidentalis (Arborvitae) planted → native to eastern lower 48 and Canada (USDA)

Assessors Map 29, Lots 54 and 71, Camel Street – dumping of fill in a wetland

Comments/Recommendation: Property is in tax title and owned by the Town. As such, DPW is able to remove the dumped fill and post a no dumping sign.

38 Camel Street

Recommendation: There needs to be filing for the removal of trees, installation of a driveway, and rebuild of a porch due to proximity to wetland and the fact that the property is in a flood zone.

End of Camel Street

Recommendation: No mowing beyond end of landscaped lawn. Fire pit is within existing landscaped lawn.

Assessors Map 41, Lots 60-67 and 74-81 (owner resides at 1 Pavilion Way) – clearing of vegetation, filling, and grading in a wetland

Comments/Recommendation: Why is the shrub planting deadline September 15th rather than August 31 in accordance with the Enforcement Order? Why is the upland adjacent to the wetland being seeded with commercial lawn mix rather than a seed mix that is more appropriate for a transitional buffer zone area?

I recommend accepting the restoration plan with the following modifications:

include Spring 2022 in monitoring plan

upland buffer zone area being seeded with something a little more appropriate than commercial lawn mix

an as-built plan will be provided to the Commission upon completion of the restoration

The Enforcement Order and associated Restoration Plan shall be recorded at the Registry of Deeds.

The following conditions shall apply to the Restoration Plan:

REP-2, REP-3, REP-8, REP-11

The following conditions shall be recorded and apply in perpetuity:

DER-4, REP-12

General Business:

- a) Payment of Bills: 2 bills
- b) Hedge Street: Email from Vinnie
- c) Notice of Intent Filing Fees clarification: Notice of Intent bylaw fees calculated as WPA fees are calculated or flat fee?